

Senate Bill No. 736

CHAPTER 196

An act to amend Sections 17550.4, 17550.13, 17550.14, 17550.20, 17550.21, 17550.30, 17550.37, 17550.41, and 17550.47 of, to add Section 17550.42 to, and to repeal Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 and Sections 17550.34 and 17550.59 of, the Business and Professions Code, relating to sellers of travel.

[Approved by Governor August 3, 2003. Filed with
Secretary of State August 4, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 736, Speier. Sellers of travel.

Existing law provides a comprehensive scheme for the regulation of sellers of travel that is to be terminated on January 1, 2006. Under these provisions, sellers of travel are required, unless exempted, to register with the Attorney General and to comply with various requirements. Upon termination of these provisions, certain other provisions governing travel promoters become effective. Existing law also creates the Travel Consumer Restitution Corporation as a nonprofit mutual benefit corporation, which administers funds obtained from assessments on sellers of travel for distribution to aggrieved consumers. Existing law limits the time in which an aggrieved consumer may file a complaint to 6 months after the scheduled date of completion of travel. A violation of the provisions governing sellers of travel is a crime.

This bill would delete the termination on January 1, 2006, of the provisions governing sellers of travel, and would delete the provisions governing travel promoters that are to become effective on that date. This bill would make various revisions to the provisions governing sellers of travel and the Travel Consumer Restitution Corporation, relative to the definition of an air carrier, late payment of fees, disclosure requirements, appeals of decisions of the corporation, and various other matters. The bill would also specify certain nomination procedures for nomination as a participant director of the Travel Consumer Restitution Corporation and require a candidate to submit certain information under penalty of perjury, thereby creating a new crime.

This bill would expand the definition of an aggrieved person, for purposes of filing a claim with the Travel Consumer Restitution Fund, to include a person located in California at the time of the sale who made any payment on behalf of the passenger. The bill would also change the

time limit in which an aggrieved person may file a claim to one year after the scheduled date of completion of travel. The bill would expand the purposes for which the moneys in the fund are required to be used to include dissemination of information.

Because the bill would change the definition of a crime and add a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code is repealed.

SEC. 2. Section 17550.4 of the Business and Professions Code is amended to read:

17550.4. An air carrier is a transporter by air of persons that operates under a certificate of convenience and necessity issued by the United States Department of Transportation or under the certification of a foreign government that is recognized by the United States Department of Transportation.

SEC. 3. Section 17550.13 of the Business and Professions Code is amended to read:

17550.13. (a) A seller of travel shall not receive any money or other valuable consideration in payment for air or sea transportation or other travel services offered by the seller of travel unless at the time of or prior to the receipt of payment the seller of travel first furnishes to the person making that payment written materials conspicuously setting forth the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The total amount to be paid by or on behalf of the passenger, amount paid to date, the date of any future payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The name of the provider of the air or sea transportation, and the date, time, and place of each departure, or the circumstances under which the date, time, and place of departure will be determined.

(4) All terms and conditions relating to the air or sea transportation or travel services being purchased by the passenger, including



cancellation conditions. An air carrier's or an ocean carrier's standard contract of carriage is not required to be disclosed prior to the seller of travel receiving any money or other valuable consideration.

There is no violation of this subdivision if both of the following occur:

(A) Compliance was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel.

(B) The seller of travel obtains from each passenger written acknowledgment that the passenger has not received disclosure of the terms and conditions required by this section.

(5) A clear and conspicuous statement that upon cancellation of the transportation or travel services, where the passenger is not at fault and has not canceled in violation of any terms and conditions previously clearly and conspicuously disclosed to and agreed to by the passenger, all sums paid to the seller of travel for services not provided will be promptly paid to the passenger, unless the passenger otherwise advises the seller of travel in writing, after cancellation.

(6) If the seller of travel is required by this article to have a trust account or bond, a clear and conspicuous disclosure stating: "California law requires certain sellers of travel to have a trust account or bond. This business has [a trust account] or [a bond issued by (company)] in the amount of (\$X)."

(7) If the seller of travel is a participant in the Travel Consumer Restitution Fund and the passenger, or the person making payment for the passenger, was located in California at the time of the sale of air or sea transportation or travel services, a clear and conspicuous notice of the right of the passenger, or the right of the person making payment for the passenger, to make a claim on that fund. The notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(8) If the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

(9) If the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.



(10) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(11) If the seller of travel is a participant in the Travel Consumer Restitution Fund and the passenger is located outside California, a clear and conspicuous disclosure that the transaction is not covered by the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(b) If a seller of travel offers, sells, provides, or distributes a travel certificate as defined in Section 17550.10 and any passenger payment is nonrefundable, in whole or in part, the seller of travel shall obtain the written acknowledgment of that limitation from the end user prior to, or at the time of, receipt of any money or other valuable consideration.

(c) Notwithstanding any other provision of this section, if money or other valuable consideration is received from a customer to whom the seller of travel has sold air or sea transportation within the preceding 12 months and the disclosures required by this section are substantially the same as the disclosures given in connection with the prior travel, the disclosures required by this section shall be made within five days of receipt of that money or other valuable consideration.

(d) Notwithstanding any other provision of this section, if money or other valuable consideration is received in payment for air transportation and (1) the seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation and (2) the seller of travel forwards the amount paid, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to the airline providing the transportation or to the Airlines Reporting Corporation, the disclosures required by this section with respect to that air transportation may be made orally.

SEC. 4. Section 17550.14 of the Business and Professions Code is amended to read:

17550.14. (a) The seller of travel has an obligation either to provide the air or sea transportation or travel services purchased by the passenger or to make a refund as provided by this section. The seller of travel shall return to the passenger all moneys paid for air or sea transportation or travel services not actually provided to the passenger, within either of the following periods, whichever is earlier:

- (1) Thirty days from one of the following dates:
 - (A) The scheduled date of departure.
 - (B) The day the passenger requests a refund.
 - (C) The day of cancellation by the seller of travel.



(2) Three days from the day the seller of travel is first unable to provide the air or sea transportation or travel services.

As used in this section, “unable to provide” includes, but is not limited to, any day on which the passenger’s funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17550.21 or the funds necessary to provide the passenger’s transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16.

(b) If the seller of travel has disbursed the passenger’s funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of Section 17550.15, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger’s funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16. This subdivision does not apply to refunds subject to subdivision (c) or subdivision (d).

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the seller of travel, necessitating a refund as required by subdivision (a).

SEC. 5. Section 17550.20 of the Business and Professions Code is amended to read:

17550.20. (a) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing fee of one hundred dollars (\$100) for each location from which the seller of travel conducts business. A late fee of five dollars (\$5) per day, up to a



maximum of five hundred dollars (\$500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be issued or approved until the late fee, and the filing and late fees for each year the seller of travel operated without being registered, have been paid. A seller of travel shall be deemed to do business in this state if the seller of travel solicits business from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration shall be valid for one year from the effective date thereof shown on the registration issued by the office of the Attorney General and may be annually renewed by making the filing required by Section 17550.21 and paying a filing fee of one hundred dollars (\$100) for each location from which the seller of travel conducts business. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be renewed until the late fee, and the filing and late fees for each year the seller of travel operated without being registered, have been paid.

(c) Whenever, prior to expiration of a seller of travel's annual registration, there is a material change in the information required by Section 17550.21, the seller of travel shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the office of the Attorney General.

(d) (1) Not less than 10 days prior to the transfer or sale of any interest in a seller of travel, the selling or transferring owner shall file with the office of the Attorney General, Seller of Travel Program, a notice of encumbrance, sale, or transfer of ownership, using a form provided for that purpose by the office of the Attorney General. The notice shall provide the information required pursuant to subdivision (d) of Section 17550.21 as to each transferee.

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

(e) The office of the Attorney General shall suspend the registration of any seller of travel who (1) fails to make any payment required pursuant to Article 2.7 (commencing with Section 17550.35) or (2) submits a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. The Attorney General shall provide written notice to the seller of travel



by first-class mail at the seller of travel's place of business set forth in the registration statement that the seller of travel's registration has been suspended until all fees that are due have been paid. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(f) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(g) This section does not apply to an individual, natural person who meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling air or sea transportation and other travel goods or services in connection with the transportation.

(2) Acts only on behalf of a registered seller of travel with whom the person has a written contract in the offer or sale to a passenger of air or sea transportation and other goods or services in connection with the transportation and sells no other air or sea transportation or travel services to that passenger.

(3) Provides air or sea transportation or travel services that are offered or sold pursuant to the official agency appointment of the registered seller of travel with whom the person has a written contract.

(4) Does not receive any consideration for air or sea transportation or other travel services from the passenger.

(5) Requires the passenger to pay all consideration for air or sea transportation or other travel services directly to the air carrier or ocean carrier or to the registered seller of travel.

(6) Discloses both of the following:

(A) The person is acting on behalf of a registered seller of travel.

(B) The name, address, telephone number, and registration number of the registered seller of travel on whose behalf the person is acting.

The person shall make the disclosures required by this paragraph in writing to the passenger at the same time the passenger receives notice under Section 17550.13. If the person transacts business in this state on the Internet, the disclosures also shall appear on the home page of the person's Web site and shall be prominently set forth in the first electronic mail message sent to the passenger that refers to the passenger's purchase of air or sea transportation or travel services.

(h) Whenever the Attorney General determines that a registration application is accurate and complete, the application shall be processed and a registration certificate shall be issued to the seller of travel within 21 days.



SEC. 6. Section 17550.21 of the Business and Professions Code is amended to read:

17550.21. Each filing pursuant to Section 17550.20 shall contain the following information:

(a) The name or names of the seller of travel, including the name under which the seller of travel is doing or intends to do business, if different from the name of the seller of travel.

(b) The seller of travel's business form and place of organization and, if operating under a fictitious business name, the location where the fictitious name has been registered. If the seller of travel does business in California from one or more locations in this state but does not maintain its principal place of business in this state, the seller of travel shall state whether it meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1.

(c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of travel. The statement shall designate which location is the principal place of business.

(d) The complete business and residential addresses and telephone numbers, the driver's license number and state of issuance or equivalent personal identification, the social security number, and the date of birth of each owner and principal of the seller of travel. "Owner" means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, a seller of travel. "Principal" means an owner, an officer of a corporation, a general partner of a partnership, or a sole proprietor of a sole proprietorship.

(e) A statement as to whether the seller of travel, any owner, or principal, or any other seller of travel owned or managed by any owner or principal of the seller of travel, or the seller of travel itself has had entered against that person or entity any judgment, including a stipulated judgment, order, made a plea of nolo contendere, or been convicted of any criminal violation. The statement shall identify the person, the court or administrative agency rendering the judgment, order, or conviction, the docket number of the matter, and the date of the judgment, order, or conviction; where the judgment, order, or record of conviction is filed; and the nature of the case or judgment. This subdivision does not require disclosure of marital dissolution, child support, or child custody proceedings.

(f) A copy of the travel certificates, if any, that are or will be sold, marketed, or distributed to any person or entity by the seller of travel.



(g) The seller of travel shall file with the Attorney General a signed and dated statement indicating (1) the account number of each trust account required by this article, (2) the name and address of each financial institution at which the seller of travel maintains a trust account required by this article, (3) any registration number issued to the seller of travel by the Airline Reporting Corporation or the International Association of Travel Agents Network, and (4) a consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, provider of travel services, and any financial institution where passenger funds have been deposited, any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

(h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.

(i) The name, address, and telephone number of each person described in subdivision (g) of Section 17550.20 with whom the seller of travel contracts.

(j) The information required by this section shall be verified by a declaration signed and dated by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon reregistration by a previously registered seller of travel, the information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

SEC. 7. Section 17550.30 of the Business and Professions Code is amended to read:

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fines, penalties, and fees, including late fees, collected pursuant to this article, or any moneys collected for a violation of this

article or Article 2.7 (commencing with Section 17550.35) shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants, and the dissemination of information, including consumer education regarding this article and Article 2.7 (commencing with Section 17550.35).

(c) The sum of three hundred ninety-five thousand dollars (\$395,000) is hereby appropriated from the Travel Seller Fund to the Department of Justice for purposes of the Sellers of Travel Program established pursuant to Article 2.6 (commencing with Section 17550).

SEC. 8. Section 17550.34 of the Business and Professions Code is repealed.

SEC. 9. Section 17550.37 of the Business and Professions Code is amended to read:

17550.37. (a) "Person aggrieved," as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, or a person located in California at the time of sale who made any payment on behalf of the passenger for air or sea transportation or travel services, who has sustained a loss as a result of the failure of a seller of travel to refund payments made by or on behalf of a passenger as payment for air or sea transportation or travel services, where a refund is due as a result of the bankruptcy, insolvency, cessation of operations, or material failure to provide the transportation or travel services purchased by the passenger. "Loss," as used herein, shall be limited to losses that are incurred in a transaction with a seller of travel who, at the time of sale, was a paid-up participant in the Travel Consumer Restitution Fund and was registered pursuant to Section 17550.20. "Person aggrieved" shall not mean or include a passenger, or person making payment on behalf of a passenger, in a transaction where the air or sea transportation or travel services are furnished by a business entity that (a) is located and providing transportation or travel services outside of the United States and (b) is not in compliance with Article 2.6 (commencing with Section 17550).

(b) Any person aggrieved who files a claim for payment from the Travel Consumer Restitution Fund thereby waives his or her right to bring any action at law or equity that (1) is against the seller of travel as to whom the claim is made and (2) arises from the transaction that is the subject of the claim against the restitution fund. The claim form required



by Section 17550.46 shall include a clear and conspicuous notice of the waiver.

(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel was not, at the time of sale, a paid-up participant in the Travel Consumer Restitution Fund, as required by subdivision (a).

(2) The seller of travel was not, at the time of sale, registered pursuant to Section 17550.20.

(3) The claimant was not located in California at the time of sale, as required by subdivision (a).

SEC. 10. Section 17550.41 of the Business and Professions Code is amended to read:

17550.41. (a) The Board of Directors of the Travel Consumer Restitution Corporation shall be composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of Consumer Affairs.

(2) One employee of the Department of Justice, assigned by the office of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) Four directors who are participants in the Travel Consumer Restitution Fund.

(b) The director appointed pursuant to paragraph (1) of subdivision (a) shall serve until the appointment is revoked or another appointment is made, or until the director resigns.

(c) Participant directors shall be elected by a balloting of all participants in the Travel Consumer Restitution Fund in an election to be conducted by the Travel Consumer Restitution Corporation in February of each year. Participant directors shall be elected to serve two-year terms, with two of the four participant directors being elected each year to staggered two-year terms.

(d) A person is eligible to be nominated and to serve as a participant director if the person satisfies all of the following conditions:

(1) The person's primary occupation, at the time of nomination and continuously during the previous three years, has been as the owner or manager of a seller of travel that is and has been in good standing both as a registered seller of travel and as a participant in the Travel Consumer Restitution Fund.

(2) The person has not been convicted of a crime, including a plea or verdict of guilty or a conviction following a plea of nolo contendere.



(3) The person is not subject to a judgment or administrative order, whether entered after adjudication or stipulation, predicated on that person's commission of an act of dishonesty, fraud, deceit, or violation of this chapter or Chapter 5 (commencing with Section 17200) of Part 2 of Division 7.

(4) The person is not a defendant in a pending criminal or civil law enforcement action brought by a public prosecutor.

(5) The person has not served as a participant director of the Travel Consumer Restitution Fund at any time during the previous 18 months.

(6) Within five days after the end of the nomination period, the person nominated to be a director submits an application to the Travel Consumer Restitution Fund, signed under penalty of perjury, that attests to the person's satisfaction of all of the conditions specified in paragraphs (1) to (5), inclusive.

(e) The Travel Consumer Restitution Fund may not impose requirements for nomination to be a participant director in addition to the requirements described in subdivision (d).

(f) If a nominee does not satisfy the requirements of subdivision (d), the Travel Consumer Restitution Fund shall notify the nominee and the Attorney General in writing, within 30 days of the nominee's application, that the person has been rejected as a nominee and the specific grounds for the rejection.

(g) The nomination period shall be open for the period beginning 90 days and ending 30 days before the election. Any participant may nominate for election any participant who is eligible to serve as provided in subdivision (d).

(h) The Travel Consumer Restitution Fund shall enable nominees to submit, within 21 days before the election, written statements of up to 500 words in a reasonable format concerning their candidacy and shall mail those statements to participants in the Travel Consumer Restitution Fund and make those statements publicly available no later than 14 days before the election by means that may include disseminating the information on an Internet Web site or providing the information by electronic mail to any person who has requested the information and provided a valid electronic mail address.

(i) A director who does not qualify to be a participant or who otherwise becomes unable to serve shall not continue to serve as director. The board of the Travel Consumer Restitution Corporation shall adopt rules setting forth the procedures to determine that a director is no longer able to serve as a director and for the board to elect a successor to serve as director until the next election.

SEC. 11. Section 17550.42 is added to the Business and Professions Code, to read:



17550.42. (a) Within 30 days of the close of the fiscal year or other reasonable period established by the board of directors, the Travel Consumer Restitution Corporation shall make publicly available a statement of the following information concerning the most recently concluded fiscal year:

- (1) The number of claims and approximate dollar amount of the claims received.
- (2) The total number of claims and total dollar amount of claims paid.
- (3) The approximate number and dollar amount of claims denied or abandoned.
- (4) The dollar balance in the restitution fund.
- (5) The amount of assessments received from participants and the operating and administrative costs and expenses of the corporation.
- (6) The number of new participants and the amount of assessments received from them.

(b) The Travel Consumer Restitution Corporation shall make publicly available within 15 days of the board of directors' approval, or other reasonable period established by the board of directors, the following information:

- (1) The approved minutes of meetings of the board of directors.
- (2) The approved estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount to be paid for claims.
- (3) The approved bylaws, as amended, of the Travel Consumer Restitution Corporation.

(c) Information may be made publicly available as required by this section by disseminating the information on an Internet Web site or providing the information by electronic mail to any person who has requested the information and provided a valid electronic mail address.

SEC. 12. Section 17550.47 of the Business and Professions Code is amended to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars (\$50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars (\$50).



(2) Any processing fee required by paragraph (1) shall be nonrefundable except where (A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or (B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than one year after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount not to exceed fifteen thousand dollars (\$15,000) per person aggrieved, not to exceed the amount paid to the participant by or on behalf of the person aggrieved for the transportation or travel services. Payments from the restitution fund shall be limited to restitution for sums paid for transportation or travel services and shall not include any other amounts, including, but not limited to, payment for lost wages, pain and suffering, emotional distress, travel insurance, lost luggage, or any consequential damages. The person aggrieved shall not be entitled to receive attorney's fees in connection with a filed claim or on appeal.

(c) All claims are to be decided on the written record before the corporation, with no hearing to be held. The record shall consist of a fully executed and complete claim form, any other documentation submitted by the claimant or the participant, and any documents or reports submitted by staff or the designated representative of the office of the Attorney General. Claims are to be decided within 45 days of receipt unless (1) the designated representative of the office of the Attorney General requests a continuance to obtain and submit information, or (2) the Travel Consumer Restitution Corporation determines that additional information or documentation is required to decide the claim. In either case, the claim shall be decided within 45 days of receipt of all additional information or documentation. A claim not decided timely shall be deemed granted.

(d) Whenever the Travel Consumer Restitution Corporation denies a claim in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the denial.

(e) A claimant may request reconsideration of an adverse decision of the Travel Consumer Restitution Corporation by mailing a written request, accompanied by a processing fee of fifty dollars (\$50) paid by check or money order, within 20 days of the date a notice of denial and



statement of decision was mailed to the claimant. Any check for the processing fee that is returned unpaid to the Travel Consumer Restitution Corporation by the financial institution upon which it is drawn shall be returned to the claimant and the request for reconsideration shall not be determined until the claimant has paid the fifty dollar (\$50) processing fee.

(f) The Travel Consumer Restitution Corporation shall, within 60 days of receipt of the request, either decide the request or advise the claimant that additional information or documentation is needed, and, if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) No decision of the Travel Consumer Restitution Corporation granting or denying a claim in whole or part shall be subject to review or appeal except as provided in this section. A claimant may seek review of the denial, in whole or part, of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request for reconsideration has been mailed to the claimant. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file its response and the record of the claim before the corporation with the clerk of the superior court within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall affirm the decision if it is supported by substantial evidence in light of the entire record. The



pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, and the decision of the superior court shall be appealable by either party. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Corporation.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall not be entitled to an award in excess of the amount of the original claim.

(l) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund whenever the judgment becomes final. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate, after payment of outstanding debts and liabilities as provided in Section 17550.57.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

(n) (1) A director shall not participate in the decision of a claim if the director has a financial interest in the outcome of the decision, has a financial interest in or is employed by the seller of travel that is the subject of the claim, or has any familial relationship or close personal friendship with either the claimant or any owner, officer, director, or manager of the seller of travel that is the subject of the claim.

(2) The director shall disclose to the other directors before a claim is considered all matters that disqualify the director from participating in the decision of the claim as described in paragraph (1).

SEC. 13. Section 17550.59 of the Business and Professions Code is repealed.

SEC. 14. It is the intent of the Legislature that the Attorney General consider reasonable improvements to the operation and functioning of the seller of travel registration program to reduce operational costs, such as the implementation of electronic registration and registration renewals, if practicable and consistent with prudent management and continued or improved levels of consumer protection.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will



be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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